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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 THE PEOPLE OF THE STATE OF CALIFORNIA,
15 Plaintiff,
16 vs.
17 SHIVA BINA, an individual; and DOES 1 through
18 50, inclusive,
19 Defendants.

20 Case No.: **BC 672057**
21 **COMPLAINT FOR ABATEMENT**
22 **AND INJUNCTION**
23 [HEALTH & SAFETY CODE
24 SECTION 11570, ET SEQ.; CIVIL
25 CODE SECTION 3479, ET SEQ.]
26 [Unlimited Action]

27 **UNFORMED COPY**
28 **ORIGINAL FILED**
Superior Court of California
County of Los Angeles
AUG 14 2017
Sherri R. Carter, Executive Officer/Clerk
By: *M. S. [Signature]*, Deputy
Moses B. [Signature]

NO FEE - GOV'T CODE § 6103

1 PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, alleges as follows:

2 I. INTRODUCTION

3 1. Plaintiff, the People of the State of California (the "People"), brings this action
4 (the "Action") to abate and enjoin a narcotics-related public nuisance at 1745 W. 58th Street,
5 Los Angeles, California 90062 (the "Property"), pursuant to the Narcotics Abatement Law
6 ("NAL"), California Health and Safety Code section 11570, *et seq.*, and the Public Nuisance
7 Law ("PNL"), California Civil Code sections 3479 and 3480. Between January 2017 and June
8 2017, Los Angeles Police Department ("LAPD") officers executed **four** search warrants at the
9 Property. On all four occasions, officers recovered an array of narcotics, including cocaine,
10 heroin, and methamphetamine, drug paraphernalia, and U.S. currency—totaling about
11 \$4,500.00—from the Property. Officers also recovered two handguns and live ammunition on
12 one occasion, and live ammunition by itself on another occasion. During this same period,
13 LAPD successfully conducted seven controlled "buy-bust" operations at the Property—wherein
14 an informant successfully purchased narcotics before the execution of the aforementioned
15 warrants—and made **ten (10)** arrests for narcotics-related incidents. Of these arrests, officers
16 have arrested at least **eight different suspects** at the Property for selling narcotics. Despite
17 this tremendous effort by LAPD to investigate and disrupt the narcotics activity, the Property
18 remains a one-stop drug shop at which narcotics are continually bought, sold, and stored, thus
19 leaving the People with no option but to bring this Action.

20 2. The Property¹ is situated on 58th Street east of Western Avenue and is
21 surrounded by perpendicular alleyways that run in an east-west and a north-south direction.
22 The Property consists of front and back residential structures connected by a courtyard that
23 altogether form a fourplex. The Property is known within the community as a place where
24 narcotics is bought and sold. As a result of this reputation, the Property continues to attract
25 individuals seeking to sell, buy, and use narcotics, despite repeated arrests and search
26 warrants. The word "Good" is inscribed on the backside of the Property—to advertise
27

28

1 The Property is actually comprised of at least four addresses: 1743 W. 58th Street, 1743 ½ W. 58th Street, 1745 W. 58th Street, and 1745 ½ W. 58th Street, Los Angeles, California 90062.

1 relatively discreetly to drug buyers that high-quality narcotics are sold there.

2 3. Since January 25, 2016, Defendant SHIVA BINA ("Defendant") has owned the
3 Property and continues to own it. From July 14, 2011, to January 25, 2016, the property was
4 owned by 58th Street H327, LLC, a California limited liability company, of which Defendant
5 was a managing member. Defendant is directly and/or indirectly permitting and facilitating
6 drug sales, drug distribution, and drug usage at the Property, and creating a public nuisance
7 that has disturbed the entire community and neighborhood.

8 4. This Action is intended to redress the unacceptable state of affairs at the
9 Property and to halt the sale, distribution, and purchase of drugs.

10 **II. THE PARTIES AND THE PROPERTY**

11 **A. The Plaintiff**

12 5. Plaintiff, the People, is the sovereign power of the State of California designated
13 in California Health and Safety Code section 11571 and California Code of Civil Procedure
14 section 731 to be the complaining party in actions brought to abate, enjoin, and penalize
15 narcotics nuisances and public nuisances, respectively.

16 **B. The Defendant**

17 6. As stated, Defendant Shiva Bina owns the Property in her individual capacity and
18 has owned it since January 25, 2016. From July 14, 2011, to January 25, 2016, the Property
19 was owned by 58th Street H327, LLC, a California limited liability company of which Shiva Bina
20 was a managing member.

21 7. The true names and capacities of defendants sued herein as Does 1 through 50,
22 inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious
23 names. Each such defendant is responsible in some manner for conducting, maintaining, or
24 directly or indirectly permitting the unlawful activities and acts complained of herein. When the
25 true names and capacities of said defendants have been ascertained, Plaintiff will seek the
26 Court's leave to amend this complaint and to insert in lieu of such fictitious names the true
27 names and capacities of said fictitiously named defendants.

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1 **C. The Property**

2 8. The Property is located within the City of Los Angeles on 58th Street east of
3 Western Avenue. The commonly known address of the Property is 1743, 1743 ½, 1745, and
4 1745 ½ West 58th Street, Los Angeles, California 90062. The legal description of the Property
5 is: "Lot 28 of Tract No. 4373, in the City of Los Angeles, County of Los Angeles, State of
6 California, as per Map recorded in Book 47 of Page(s) 96 of Maps, in the Office of the County
7 Recorder of Said County. Except therefrom all oil, gas, minerals and other hydrocarbon
8 substances, lying below a depth of 500 feet from the surface of said property, but with no right
9 of surface entry, where they have been previously reserved in instruments of record." The
10 Assessor's Parcel Number for the Property is 5003-029-015.

11 **III. THE NARCOTICS ABATEMENT LAW**

12 9. The abatement of a nuisance is a long established and well-recognized exercise
13 of the state's police power. (*People v. Barbieri* (1917) 33 Cal.App. 770, 775; *People ex rel.*
14 *Hicks v. Sarong Gals* (1974) 42 Cal.App.3d 556, 563.) Since its enactment in 1972, the
15 principal purpose of the NAL (Health & Saf. Code, § 11570, *et seq.*) is the abatement of
16 buildings and places "used for the purpose of unlawfully selling, serving, storing, keeping,
17 manufacturing, or giving away any controlled substance, precursor, or analog specified in this
18 division" (Health & Saf. Code, § 11570.)

19 10. The NAL provides that every building or place used for the purpose of unlawfully
20 selling, serving, storing, keeping, manufacturing, or giving away any controlled substance,
21 precursor, or analog, *inter alia*, "is a nuisance which **shall** be enjoined, abated, and prevented
22 . . whether it is a public or private nuisance." (Health & Saf. Code, § 11570 (emphasis added);
23 *People ex rel Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1389; *Lew v. Superior Court*
24 (1993) 20 Cal.App.4th 866, 870-871.)

25 11. Health and Safety Code section 11571 authorizes a city attorney to bring an
26 action to abate, prevent, and perpetually enjoin such nuisances. It provides in relevant part:
27 "Whenever there is reason to believe that a nuisance as described in section 11570 is kept,
28 maintained, or exists in any county, the district attorney of the county, or the city attorney of

1 any incorporated city or of any city and county, in the name of the people, may . . . maintain an
2 action to abate and prevent the nuisance and perpetually to enjoin the person conducting or
3 maintaining it, and the owner, lessee, or agent of the building or place in or upon which the
4 nuisance exists from directly or indirectly maintaining or permitting the nuisance."

5 12. Health and Safety Code section 11573(a) provides that: "If the existence of the
6 nuisance is shown in the action to the satisfaction of the court or judge, either by verified
7 complaint or affidavit, the court or judge **shall** allow a temporary restraining order or injunction
8 to abate and prevent the continuance or recurrence of the nuisance." (Emphasis added.) In
9 addition, Health and Safety Code section 11581 provides, as an additional remedy, for the
10 removal and sale of all fixtures and movable property on the premises used in aiding or
11 abetting the nuisance and for the closure of the building for up to one year.

12 IV. THE PUBLIC NUISANCE LAW

13 13. Civil Code section 3479 defines a public nuisance as "[a]nything which is
14 injurious to health, including, but not limited to, the illegal sale of controlled substances, or is
15 indecent or offensive to the senses, or an obstruction to the free use of property, so as to
16 interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free
17 passage or use, in the customary manner, of any . . . public park, square, street, or highway . .
18 . ." (See *City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 99 ("The Legislature has defined in
19 general terms the word 'nuisance' in Civil Code section 3479. . . .").)

20 14. Civil Code section 3480 defines a public nuisance as "one which affects at the
21 same time an entire community or neighborhood, or any considerable number of persons,
22 although the extent of the annoyance or damage inflicted upon individuals may be unequal."

23 15. In particular, drug dealing, loitering, consumption of alcohol and illegal drugs, and
24 boisterous conduct which creates a "hooligan-like atmosphere" constitutes a public nuisance.
25 (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1120.)

26 16. Civil Code section 3491 provides for the methods by which public nuisances
27 such as those alleged herein may be abated. Civil Code section 3491 states that the
28 "remedies against a public nuisance are indictment or information, a civil action or abatement."

1 Abatement is "accomplished by a court of equity by means of an injunction proper and suitable
2 to the facts of each case." (*Sullivan v. Royer* (1887) 72 Cal. 248, 249; *see also People v.*
3 *Selby Smelting and Lead Co.* (1912) 163 Cal. 84, 90 ("[I]n California, the rule is well
4 established that in proper cases injunctive relief which accomplishes the purposes of
5 abatement without its harsh features is permissible.").)

6 17. Code of Civil Procedure section 731 authorizes a city attorney to bring an action
7 to enjoin or abate a public nuisance. It provides in relevant part: "A civil action may be brought
8 in the name of the people of the State of California to abate a public nuisance . . . by the city
9 attorney of any town or city in which such nuisance exists."

10 18. Where "a building or other property is so used as to make it a nuisance under the
11 statute, the nuisance may be abated . . . , notwithstanding that the owner had no knowledge
12 that it was used for the unlawful purpose constituting a nuisance." (*People ex rel. Bradford v.*
13 *Barbiere* (1917) 33 Cal.App. 770, 779; *see also Sturges v. Charles L. Harney, Inc.* (1958) 165
14 Cal.App.2d 306, 318 ("a nuisance and liability therefore may exist without negligence"); *People*
15 *v. McCadden* (1920) 48 Cal.App. 790, 792 ("A judgment supported on findings that such
16 nuisance was conducted and maintained on the premises in question, regardless of the
17 knowledge of the owner thereof, is sufficient. Such knowledge on the part of the owner . . . is
18 unnecessary."); *People v. Peterson* (1920) 45 Cal.App. 457, 460 ("[I]t was not necessary . . .
19 for the trial court to find either, that the [defendants] threatened, and unless restrained, would
20 continue to maintain, aid, and abet, the nuisance, or that they knew the building was used in
21 violation of the act. . . . The existence of the nuisance was the ultimate fact in this case, and
22 having been found, supports the judgment.").) This is because "the object of the act is not to
23 punish; its purpose is to effect a reformation of the property itself." (*People v. Bayside Land*
24 *Co.* (1920) 48 Cal.App. 257, 261.)

25 V. FIRST CAUSE OF ACTION FOR NARCOTICS ABATEMENT

26 [Health and Safety Code Section 11570, et seq. – Defendant and Does 1 Through 50]

27 19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 of this
28 Complaint and makes them part of the First Cause of Action, as if fully set forth herein.

1 20. From at least 2015 to the present, the Property has been used and is currently
2 being used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or
3 giving away controlled substances in violation of Health and Safety Code section 11570, *et*
4 *seq.* Drug dealers use the Property as a hub to store and sell narcotics. From 2015 to the
5 present, the narcotics activity at the Property has been continual and ongoing. Further, the
6 Property's reputation within the community is as a location where narcotics are used and sold.

7 21. Defendant, who owns the Property, and Does 1 through 50 are responsible for
8 conducting, maintaining, and/or directly or indirectly permitting the narcotics-related nuisance
9 as alleged herein. Plaintiff has no plain, speedy, and adequate remedy at law and unless
10 Defendant and Does 1 through 50 are restrained and enjoined by order of this Court, they will
11 continue to use, occupy, and maintain, and/or to aid, abet, or permit, directly or indirectly, the
12 use, occupation, and maintenance of the Property, together with the fixtures and
13 appurtenances located therein, for the nuisance complained of herein, in violation of California
14 law and to the great and irreparable damage of the public.

15 **VI. SECOND CAUSE OF ACTION FOR PUBLIC NUISANCE**

16 **[Civil Code Section 3479, *et seq.* – Defendant and Does 1 Through 50]**

17 22. Plaintiff hereby incorporates by reference Paragraphs 1 through 21 of this
18 Complaint and makes them part of this Second Cause of Action, as if fully set forth herein.

19 23. From at least 2012 to the present, the Property has been used or occupied in
20 such a manner as to constitute a public nuisance in violation of Civil Code sections 3479 and
21 3480. The public nuisance has consisted of narcotics-related and criminal incidents that
22 continue to occur on an ongoing basis, including but not limited to: narcotics sales that attract
23 narcotics users and buyers to the Property; loitering for narcotics sales; verbal threats; and,
24 interference with a police investigation. Since at least January 2016 to the present, Defendant
25 and Does 1 through 50 have owned, operated, occupied, used, and/or directly or indirectly
26 permitted to be occupied and used, the Property in such a manner that it continues to
27 constitute a public nuisance, given the aforementioned narcotics-related and criminal incidents
28 that continue to occur there. The public nuisance, as described herein, is injurious to health,

1 indecent or offensive to the senses, and/or an obstruction to the free use of property, so as to
2 substantially and unreasonably interfere with the comfortable enjoyment of life or property by
3 those persons living in the surrounding community.

4 24. Defendant and Does 1 through 50, in owning, conducting, maintaining, and/or
5 permitting the use of the Property, directly or indirectly, as a public nuisance, have engaged in
6 wrongful conduct and caused a serious threat to the general health, safety, and welfare of the
7 persons in the area surrounding the Property. The public nuisance continues on an ongoing
8 and a continual basis.

9 25. Unless Defendant and Does 1 through 50 are restrained and enjoined by order of
10 this Court, they will continue to use, occupy, and maintain, and to aid, abet, or permit, directly
11 or indirectly, the use, occupation, and maintenance of the Property, together with the fixtures
12 and appurtenances located therein, for the purpose complained of herein, in violation of
13 California law and to the great and irreparable damage of the public.

14 **PRAYER**

15 **WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT ORDER, ADJUDGE, AND**
16 **DECREE AS FOLLOWS:**

17 **AS TO THE FIRST CAUSE OF ACTION**

18 1. That Defendant, Does 1 through 50, and the Property, be declared in violation of
19 Health and Safety Code section 11570, *et seq.*

20 2. That the Court order Defendant, as the owner of the Property, to reside at the
21 Property until the nuisance is abated, in accordance with California Health and Safety Code
22 section 11573.5.

23 3. That the Property, together with the fixtures and moveable property therein and
24 thereon, be found to constitute a public nuisance and be permanently abated as such in
25 accordance with Section 11581 of the California Health and Safety Code.

26 4. That the Court grant a preliminary injunction, a permanent injunction, and an order
27 of abatement in accordance with Section 11570, *et seq.*, of the California Health and Safety
28 Code, enjoining and restraining Defendant and her agents, officers, employees, transferees,

1 successors-in-interest, and anyone acting on her behalf, from unlawfully selling, serving,
2 storing, keeping, manufacturing, or giving away controlled substances at the Property, and/or
3 directly or indirectly maintaining or permitting such nuisance activity.

4 5. That the Court order physical and managerial improvements to the Property in
5 accordance with California Health and Safety Code section 11573.5, and such orders as are
6 otherwise appropriate, to remedy the nuisance on the Property and enhance the abatement
7 process, including but not limited to, the following: an internet-connected video monitoring
8 system accessible by LAPD; improved lighting; sufficiently secured gating and fencing;
9 improved tenant screening and lease enforcement procedures; armed, licensed security
10 guards; and, prohibiting known narcotics users and dealers and gang members from
11 accessing the Property.

12 6. That as part of the Judgment, an Order of Abatement be issued, and that the
13 Property be closed for a period of one year, not to be used for any purpose, and be under the
14 control and custody of this Court for said period of time; or, in the alternative, if the Court
15 deems such closure to be unduly harmful to the community, that Defendant and Does 1
16 through 50 pay an amount of damages equal to the fair market rental value of the Property for
17 one year to the City or County in whose jurisdiction the nuisance is located in accordance with
18 Health and Safety Code section 11581, subdivision (c)(1).

19 7. That Defendant and Does 1 through 50 each be assessed a civil penalty in an
20 amount not to exceed twenty-five thousand dollars (\$25,000.00).

21 8. That all fixtures and moveable property used in conducting, maintaining, aiding, or
22 abetting the nuisance at the Property be removed by LAPD and sold in the manner provided
23 for the sale of chattels under execution. Said fixtures and property shall be inventoried and a
24 list prepared and filed with this Court.

25 9. That there shall be excepted from said sale such property to which title is
26 established in some third party that is not a defendant or agent, officer, employee, or servant of
27 any defendant in this proceeding.

28 10. That the proceeds from said sale be deposited with this Court for payment of the

1 fees and costs of sale. Such costs may be incurred in closing said property and keeping it
2 closed, removal of said property, and Plaintiff's costs in the Action, including attorneys' fees,
3 and such other costs as the Court shall deem proper.

4 11. That if the proceeds of the sale do not fully discharge all such costs, fees, and
5 allowances, the Property shall also be sold under execution issued upon the order of the Court
6 or judge and the proceeds of such sale shall be applied in a like manner. That any excess
7 monies remaining after payment of approved costs shall be delivered to the owner of said
8 property. Ownership shall be established to the satisfaction of this Court.

9 12. That Defendant and Does 1 through 50, and any agents, trustees, officers,
10 employees and anyone acting on their behalf, and their heirs and assignees, be perpetually
11 enjoined from transferring, conveying, or encumbering any portion of the Property, for
12 consideration or otherwise, without first obtaining the Court's prior approval.

13 13. That Defendant and Does 1 through 50 be ordered to immediately notify any
14 transferees, purchasers, commercial lessees, or other successors-in-interest to the subject
15 Property of any application brought by Plaintiff for any temporary restraining order, preliminary
16 injunction, or permanent injunction in this Action or relating to the Property, or the existence of
17 any temporary restraining order, preliminary injunction, or permanent injunction issued in this
18 Action or relating to the Property, to all prospective transferees, purchasers, commercial
19 lessees, or other successors-in-interest, *before* entering into any agreement to sell, lease or
20 transfer the Property, for consideration or otherwise, all or any portion of the Property that is
21 the subject of this Action.

22 14. That Defendant and Does 1 through 50 be ordered to immediately give a
23 complete, legible copy of any temporary restraining order and preliminary and permanent
24 injunctions to all prospective transferees, purchasers, lessees, or other successors-in-interest
25 to the Property.

26 15. That Defendant and Does 1 through 50 be ordered to immediately request and
27 procure signatures from all prospective transferees, purchasers, lessees, or other successors-
28 in-interest to the subject Property, which acknowledges his/her respective receipt of a

1 complete, legible copy of any temporary restraining order or preliminary or permanent
2 injunction, and deliver a copy of such acknowledgment to the Los Angeles City Attorney's
3 Office, c/o Deputy City Attorney Rahi Azizi or his designee.

4 16. That Plaintiff recover the costs of this Action, including law enforcement
5 investigative costs and any fees, including attorneys' fees, authorized by law, not to exceed
6 \$1,000,000.00, from Defendant and Does 1 through 50.

7 **AS TO THE SECOND CAUSE OF ACTION**

8 1. That Defendant, Does 1 through 50, and the Property, be declared in violation of
9 Civil Code section 3479, *et seq.*

10 2. That the Property, together with the fixtures and moveable property therein and
11 thereon, be declared a public nuisance and be permanently abated as such in accordance with
12 Civil Code section 3491.

13 3. That Defendant and her agents, officers, managers, employees, and anyone
14 acting on her behalf, and her heirs and assignees, be preliminarily and perpetually enjoined
15 from operating, conducting, using, occupying, or in any way permitting the use of the Property
16 as a public nuisance. Such orders should include, but not be limited to physical and
17 managerial improvements to the Properties, and such other orders as are appropriate to
18 remedy the nuisance on the Properties and enhance the abatement process.

19 4. Such costs as may occur in abating said nuisance at the Property and such other
20 costs as the Court shall deem just and proper.

21 5. That Plaintiff be granted such other and further relief as the Court deems just and
22 proper, including closure and/or demolition of the Property.

23 **AS TO ALL CAUSES OF ACTION**

24 1. That Plaintiff recover the amount of the filing fees and the amount of the fee for
25 the service of process or notices which would have been paid but for Government Code
26 section 6103.5, designating it as such. The fees may, at the Court's discretion, include the
27 amount of the fees for certifying and preparing transcripts.

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1 2. That Plaintiff be granted such other and further relief as the Court deems just and
2 proper.

3
4 DATED: August 14, 2017

Respectfully submitted,

5 MICHAEL N. FEUER, City Attorney
6 MARY CLARE MOLIDOR, Chief, Crim. & Spec. Lit. Branch
7 TINA HESS, Deputy Chief, Safe Neighborhoods & Anti-
8 Gang Division
9 JONATHAN CRISTALL, Supervising Assist. City Attorney
10 RAHI AZIZI, Deputy City Attorney

11 By:



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